

REMARKS

Claims 1-20 are currently pending.

Claims 1-9, 11-12 and 16 have been canceled.

Claims 10 and 17 are currently withdrawn.

Claim 1 has been amended to recite 95% identity. Support for the amendment can be found in the Specification on page 14, line 13.

Claims 13-15 have been amended. Support for the amendments can be found in the Specification on pages 27-32.

Claim 20 has been amended. Support for the amendment can be found in the Specification on page 28, line 1 to page 33, line 30.

New claims 21-23 have been added. Support for the amendments can be found in claims 13-15 and 18-20.

No new matter has been entered.

Amendments to the Specification

The Examiner states that the application contains sequence disclosures that are missing sequence identifiers, such as those found on pages 63 and 64 of the Specification. Applicants have amended the Specification to provide the needed SEQ ID NOS associated with these sequences.

In addition, Applicants have amended the Specification to include a Substitute Sequence Listing in paper form and as a CRF. The CRF of the Sequence Listing, file "2004-01-20 2750-1573PC.ST25", is identical to the paper copy except that it lacks formatting. In no way does the CRF add new matter to the application.

The sequences of SEQ ID NOS: 48 through 50 were inadvertently omitted from the Sequence Listing previously filed. The sequences of SEQ ID NOS: 48 through 50, as disclosed in the specification as originally filed, are now properly included in the substitute Sequence Listing enclosed herewith. The amendments to the specification are intended to reference each

nucleotide sequence with a proper SEQ ID NO. No new matter is introduced by these amendments.

Claim Objections

The Examiner objects to claims 1-4 and 16 as including non-elected subject matter. Applicants have amended the claims to reflect only that subject matter elected, thereby overcoming the objections.

Claim Rejections – 35 USC § 112

Written Description

The Examiner has rejected claims 4 and 13-16 for lack of written description. The Examiner's full rationale for the rejection appear on pages 3-5 of the Office Action and is not repeated here. To summarize, however, the Examiner alleges that SEQ ID NO:36 does not comprise SEQ ID NO:48 nor does SEQ ID NO:35 encode SEQ ID NO:48, that Applicants do not described any polynucleotide sequences that hybridize to any of the nucleotide molecules listed in claim 1 and encode a protein that increased the size of the plant or modulates flowering when transformed into a plant. Applicants respectfully traverse.

Without agreeing with the Examiner's allegations, but solely to rapidly advance prosecution, Applicants have canceled claims 4 and 16.

Applicants have amended claims 13 and 14 which now provide both structural and functional requirements of the claimed subject matter. In view of the above, Applicants request removal of the rejection.

Enablement

The Examiner has rejected claims 1, 4-9, 11-16 and 18-20 as lacking enablement. The Examiner contends that Applicants have not reduced the claimed invention to practice (see Office Action, page 6, line 14). The Examiner alleges that Applicants have not provided examples or guidance for selecting a sequence out of the multitude of sequences that are encompassed by the broad claim language and that Applicants have not provided any teaching

that would allow one skilled in the art to predict and isolate nucleic acid sequences that encode a protein with the necessary activity to be operable in the claimed invention. The Examiner concludes that undue experimentation is required to practice the invention. Applicants respectfully traverse.

Applicants direct the Examiner's attention to pages 27-32 of the Specification which discuss how to transform, select and screen plants for the function of the claimed sequences. Applicants note that while enablement requires that the Specification teach those in the art how to make and use the invention without "undue experimentation" (see *In re Vaeck*, 947 F.2d 488 (Fed. Cir. 1991)), the test of enablement is not whether any experimentation is necessary, but whether, if experimentation is undertaken, it is undue (*In re Angstadt*, 190 USPQ 214, 219 (CCPA 1976)).

Applicants have taught in detail how to: (1) make variants of SEQ ID NOs:35 and 36 (Specification page 20, line 7 to page 21, line 5); (2) calculate the percent identity between SEQ ID NO:35 and 36 and variant sequences (Specification page 13, line 23 to page 14, line 15); (3) test the variant sequences to determine suitability/function (Specification page 28, line 1 to page 33, line 4) and (4) screen transgenic plants for the desired phenotype (Specification page 31, line 7 to page 33, line 4). While the amount of experimentation to practice the full scope of the claimed invention might be extensive, it is routine and the necessary techniques are well known to those skilled in the art. As a consequence, Applicants' Specification enables the full scope of the claims and Applicants have satisfied the enablement requirement.

In view of the above, Applicants request removal of the rejections.

Claim Rejections – USC § 102

The Examiner has rejected claims 1-3, 5-9, 11-15 and 18-20 as anticipated by Alexandrov et al. The Examiner states that SEQ ID NO:28673 of Alexandrov et al. exhibits 100% identity to instant SEQ ID NO:35 and encodes a polypeptide having 100% sequence identity to SEQ ID NO:36.

Applicants have canceled claims 1-3, 5-9, 11 and 12, thereby overcoming the rejections based upon these claims. Applicants have also amended claims 13-15 and 18-20, thereby overcoming those rejections.

The Examiner has rejected claims 1-3, 5-9, 11-15 and 18-20 as anticipated by Weigel, stating that the Office interprets the recitation of "a complement" to read on a single nucleotide.

Applicants first note that claims 1-3, 5-9, 11 and 12 have been canceled, thereby obviating the rejections based upon these claims. Applicants have also deleted the term "a complement" from all claims, thereby overcoming the remaining rejections.

Claim Rejections -- USC § 101

The Examiner has rejected claims 18-20 as directed to non-statutory subject matter noting that due to Mendelian inheritance of genes, seeds could be obtained that did not comprise the transgene.

Applicants have amended claims 18-20 to specify that only seeds containing the transgene are claimed, thereby overcoming the rejections.

Conclusion

In view of the above remarks, all of the claims are submitted as defining non-obvious, patentable subject matter. Reconsideration of the rejections and allowance of the claims are respectfully requested. Applicant believes the pending application is in condition for allowance.

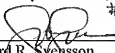
Should there be any outstanding matters that need to be resolved in the present application, the Examiner is respectfully requested to contact Susan W. Gorman, Ph.D, Reg. No. 47,604 at the telephone number of the undersigned below, to conduct an interview in an effort to expedite prosecution in connection with the present application.

Pursuant to 37 C.F.R. §§ 1.17 and 1.136(a), Applicant(s) respectfully petition(s) for a one (1) month extension of time for filing a reply in connection with the present application, and the required fee of \$130.00 is attached hereto.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies to charge payment or credit any overpayment to Deposit Account No. 02-2448 for any additional fees required under 37.C.F.R. §§1.16 or 1.17; particularly, extension of time fees.

Dated: November 1, 2010

Respectfully submitted,

By  #47,604
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